IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10682 of 1994

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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APAR PVT LTD - Petitioner(s)

Versus

MAYURKUMAR JAYANTILAL BHATT - Respondent(s)

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Appearance :
MR PARITOSH CALLA for NANAVATI ASSOCIATES for Petitioner No(s).: 1.

MR BA VAISHNAV for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/08/2005

ORAL JUDGMENT

1. This petition is directed against the award passed by the Labour Court,

Nadiad, in Reference (LCN) No.434/89 whreby the Labour Court directed the petitioenr company to reisntatet he respondent herein on his original post with full back wages.

2. The short facts of the case are that the the respondent was appointed on probation for a period of six months with effect from 16th January 1989 vide appointment order dated 6th January 1989 as a Time Keeper. After a month the services of the respondent were not found to be satisfactory and therefore the petitioenr was discharged from service by offering his all legal dues. The respondent, therefore, raised a dispute which was referred to the Labour Court, Nadiad and registered as Reference (LCN) No.434/89. The Labour Court, after hearing the parties passed the aforesaid award.

3. Mr. Calla, learned counsel for the petitioner submitted that the respondent has worked only for a period of one month and that too as a probationer. He submitted that in view of clause 3 of the appointment order, the Labour Court ought not to have directed the petitioner to reinstate the respondent in service. To support his contention Mr. Calla has relied upon a decision in the case of State of Punjab and others Vs. Suhwinder Singh, reported in 2005 AIR SCW 3477 wherein it is held that in the case of probationer, the order passed without any formal departmental inquiry or any preliminary fact finding inquiry is not illegal.

4. At the time of admission of the matter this Court had stayed the award in question.

5. Mr. Vaishnav appearing for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case before passing the award and therefore, no interference may be caused by this Court.

6. As a result of hearing and perusal of the record, it is found that the Labour Court has not considered the clause 3 of the appointment order issued to the respondent which reads as under:

> 3. You shall initially be under probation/training for a period of 6 (six) months from the date of joining our service. During the period of probation (Original or Extended) your services are liable to be terminated forthwith without assigning any reason. The decision of the Management in this regard will be final and binding on you. On satisfactory completion of your probation/training, your Appointment will be confirmed in writing. Your Probationary period shall be deemed to have been extended even though no intimation is given to you in writing to that effect for such period till you are confirmed by order in writing."

7. The petitioner has accepted the aforesaid condition while accepting the appointment order. As per the said clause, if during the probation period the services of the respondent are not satisfactory, it would be open for the petitioner to terminate the services of the petitioner without assigning any reason. There is no dispute that the respondent has worked only for a period of one month. It is also not disputed that the petitioner has found that the services of the

respondent were not satisfactory. Therefore the Labour Court has committed an error in directing the petitioner to reinstate the respondent in service with full back wages. In the case of State of Punjab and others (supra) the Apex Court has clearly held that in the case of a probationer the termination order passed without any formal departmental inquiry or any preliminary fact finding inquiry is not illegal.

8. In the premises aforesaid, the award of the Labour Court is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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